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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/378,196	08/19/1999	SHMUEL SHAFFER	99P7442US01	8833

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EXAMINER

NGUYEN, BRIAN D

ART UNIT PAPER NUMBER

2661

DATE MAILED: 03/01/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

09/378,196

Applicant(s)

SHAFFER ET AL.

Examiner

Brian D Nguyen

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on the amendment filed 10/25/04.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-14 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-14 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Claim Rejections - 35 USC § 112***

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claim 14 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 14 recites the limitation "said modified demand" in lines 15-16. There is insufficient antecedent basis for this limitation in the claim. It is suggested to change "said modified demand" with --wherein a modified demand--. In lines 17-18, it is suggested to change "D is demand (available network bandwidth divided by the number of idle users)" with --D is demand calculated by dividing available network bandwidth by the number of idle users--.

### ***Claim Rejections - 35 USC § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 1-7 are rejected under 35 U.S.C. 103(a) as being unpatentable over Roy (6,081,513) in view of Riddle (6,175,856).

Regarding claim 1, Roy discloses a telecommunications system comprising a packet switched network; one or more telephony devices coupled to the packet switched network (see

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Figure 1); a bandwidth allocation server (see col. 3, lines 45-58 and col. 5, lines 23-26) configured to cause a renegotiation of bandwidth requirement between the telephony devices, wherein the bandwidth allocation server is adapted to transmit one or more renegotiation signals to one or more telephone devices involved in a communication a telephone device seeks to join and one or more telephone devices involved in another communication (see col. 2, lines 42-45; col. 7, lines 11-19; col. 13, lines 56-61; and col. 19, lines 19-21). Roy does not specifically disclose the one or more telephony devices communicate using one or more coding algorithms and the renegotiation is of which of the coding algorithms the one or more telephony devices communicates while the one or more telephony devices are communicating using a predetermined coding algorithm, wherein the one or more renegotiation signals include one or more signals instructing one or more telephony devices to adjust a coding hierarchy. However, Riddle from the same or similar field of Roy discloses a telecommunications system in which one or more telephony devices (see Figure 1) communicates using one or more coding algorithms and renegotiating of which of the coding algorithms the one or more telephony devices communicates while the one or more telephony devices are communicating using a predetermined coding algorithm, wherein the one or more renegotiation signals include one or more signals instructing one or more telephony devices to adjust a coding hierarchy (see figure 5; col. 1, lines 48-63; col. 9, lines 6-9; col. 10, lines 57-58; and col. 11, lines 11-12). Therefore, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to use one or more coding algorithms and renegotiating the coding algorithms as network condition changes as taught by Riddle in the system of Roy so that different telephony devices of different types can communicate with each others.

Regarding claim 2, Roy further discloses the packet switched network is a H.323 network (see col. 2, lines 42-45).

Regarding claim 3, Roy further discloses the bandwidth allocation server configured to initiate the renegotiation if one or more existing connections have a QoS level which may be altered (see col. 5, lines 24-27; col. 9, lines 3-7; and col. 19, lines 4-5).

Regarding claim 4, Roy further discloses the bandwidth allocation server configured to initiate the renegotiation if a level of data traffic exceeds a predetermined threshold (see 269 of Figure 14 and col. 13, lines 62-65).

Regarding claims 5 and 6, Roy discloses a method for operating a telecommunication system comprising monitoring network usage at a bandwidth allocation server (7), the monitoring including monitoring a plurality of conference calls; and changing bandwidth allocated to the plurality of conference calls based on the monitoring network usage, responsive to signals from the bandwidth allocation server as in claim 5 (see col. 3, lines 23-26 and col. 14, lines 48-50) and determining whether an existing connection has a lower quality of service than another connection and changing bandwidth allocated to the existing connection responsive to the determining as in claim 6 (see abstract; col. 6, lines 60-62; and col. 15, lines 46-48). Roy does not specifically disclose changing codec speed for the existing connection. However, Riddle from the same or similar field of Roy discloses a method for operating a telecommunications system in which codec speed for an existing connection could be changed (see col. 1, lines 52-55 and col. 10, line 57-col. 11, line 12). Therefore, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to change codec speed for one or

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more ongoing connections as taught by Riddle in the system of Roy in order to effectively and fairly use of the system bandwidth between the connections.

Regarding claim 7, Roy further discloses determining whether data traffic on the network has exceeded a predetermined threshold (see col. 3, lines 23-26 and col. 13, lines 62-65).

5. Claims 8-13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Riddle (6,175,856) in view of Roy (6,081,513).

Regarding claims 8-11, Riddle discloses telecommunications device comprising: means for establishing a connection with another telecommunications device using a first coding algorithm (see Figure 6 and col. 6, lines 20-21) and means for changing the communication from the first coding algorithm to a second coding algorithm (see col. 1, lines 48-55 and col. 13, lines 63-65), means for directing the another telecommunications device to renegotiate coding algorithm from the first to the second coding algorithm (see col. 1, lines 52-55; col. 9, lines 6-9; col. 10, lines 57-58; and col. 11, lines 11-12). Riddle does not disclose a bandwidth allocation server that monitors network condition, the bandwidth allocation server adapted to transmit the signals to all active multimedia entities and means for monitoring network usage for levels of data traffic. However, Roy teaches a bandwidth allocation server (7) and means for monitoring network usage for levels of data traffic (see figure 1; col. 3, lines 23-26 and col. 7, lines 36-41). Therefore, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to monitor network usage for levels of data traffic as taught by Roy in the system of Riddle so that bandwidth allocated to the connections can be dynamically adjusted based on level of data traffic in order to effectively use of the system bandwidth.

Regarding claims 12 and 13, Riddle discloses all the claimed subject matter including changing from the first coding algorithm to the second coding algorithm as described in previous paragraphs, except for monitoring network usage for actual and requested quality of service (QoS) levels and determining if the connection has a lower QoS than another connection so that the codec algorithms can be changed based on the determining. However, Roy from the same or similar field of Riddle discloses monitoring network usage for actual and requested quality of service (QoS) levels as in claim 12 (see abstract; col. 3, lines 23-26; col. 7, lines 25-41) and determining if the connection has a lower QoS than another connection as in claim 13 (see col. 9, lines 3-7 and col. 14, lines 40-50). Therefore, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to monitor network usage as taught by Roy in the system of Riddle so that a higher priority will be guaranteed and have a better service than a lower priority.

### ***Double Patenting***

6. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

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Claims 5, 7, 8, 10, and 11 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 3 and 11 of U.S. Patent No. 6,757,277. Although the conflicting claims are not identical, they are not patentably distinct from each other because the limitations claimed in claims 5, 7, 8, 10, and 11 are described in claims 3 and 11 of Patent No. 6,757,277 with different wordings and/or arrangement.

***Allowable Subject Matter***

7. Claim 14 would be allowable if rewritten or amended to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action.

***Response to Arguments***

8. Applicant's arguments filed 10/25/04 have been fully considered but they are not persuasive.

The applicant argues that claims 1 has been amended to recite "wherein said one or more renegotiation signals include one or more signals instructing one or more telephony devices to adjust a coding hierarchy" claim 5 has been amended to recite "wherein said signals from said bandwidth allocation server include signals to adjust a coding hierarchy." In contrast neither Roy nor Riddle appear to relate to adjusting a coding or bandwidth hierarchy as recited in the claims at issue. This argument is not persuasive because the bandwidth is dynamically allocated in Roy's system based on QOS. Different bandwidths mean different transmission rates or different coding algorithms. In the process of re-negotiation as described in Roy, the re-negotiation signals inherently include one or more signals instructing one or more telephony devices to adjust a



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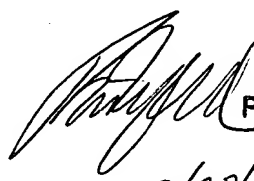
coding hierarchy so that, for example, all the devices (including new and existing members) in a conference call can agree on a coding to be used for the communication. Riddle in figure 5 also disclose negotiation and adjusting a coding hierarchy at the beginning of a teleconference or when a member is deleted or added to the teleconference. Therefore, either or both Roy and Riddle disclose the claimed limitations. The applicant's other arguments are substantially the same as the previously filed argument. The examiner's previous response-to-argument is still applicable to these arguments.

### *Conclusion*

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Brian D Nguyen whose telephone number is (571) 272-3084. The examiner can normally be reached on 7:30-6:00 Monday-Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Chau Nguyen can be reached on (571) 272-3126. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
BRIAN NGUYEN  
PRIMARY EXAMINER  
2/22/05